

**DOC # 18**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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A. DAVID CIAPPIO,

Plaintiff,

- against -

HENRY E. DAVIS et al.,

Defendants.  
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04 Civ. 2602 (JGK)

MEMORANDUM OPINION & ORDER

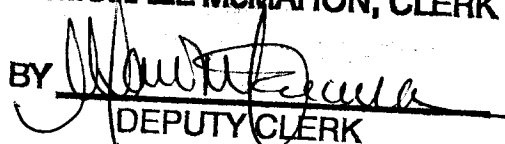
JOHN G. KOELTL, District Judge:

Two motions are pending before the Court.

First, Defendants Liberty Mutual Insurance Company and Liberty Mutual Life Assurance Co. move, pursuant to Fed. R. Civ. P. 21 to sever the claims against them asserted in the second and third causes of action from the claim asserted against Harry Davis in the first cause of action. All parties consent to this motion. Therefore, the motion to sever the first cause of action from the second and third causes of action is **granted**.

Second, defendant Davis moves to transfer the first cause of action to the Northern District of New York. While defendant

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A TRUE COPY  
J. MICHAEL McMAHON, CLERK  
BY  DEPUTY CLERK

Davis alleges that this motion is brought pursuant to 28 U.S.C. § 1391(a), that section only provides for the proper District in which an action can be brought. A motion for a change of venue should be brought under 28 U.S.C. § 1404(a) or § 1406(a). In any event, all parties consent to a change in venue to the Northern District of New York for the first cause of action brought by the plaintiff against defendant Davis. That cause of action is brought against a resident of the Northern District of New York arising out of an automobile accident that occurred in the Northern District of New York. That claim could have been brought in the Northern District of New York. All parties consent to that change in venue. Therefore, the motion to change venue for the first cause of action is **granted**. The Clerk is directed to send a copy of the file and this Order to the Northern District of New York.

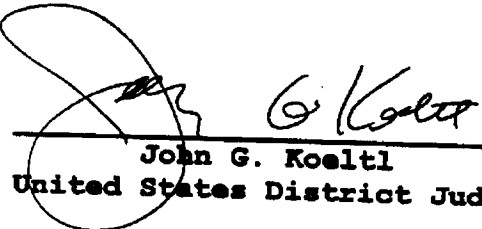
The caption for this action is hereby amended to read: A. David Ciappo v. Liberty Mutual Insurance Company and Liberty Life Assurance Company of Boston (collectively "Liberty Mutual"), 04 Civ. 02602 (JGK).

any event, all parties consent to a change in venue to the Northern District of New York for the first cause of action brought by the plaintiff against defendant Davis. That cause of action is brought against a resident of the Northern District of New York arising out of an automobile accident that occurred in the Northern District of New York. That claim could have been brought in the Northern District of New York. All parties consent to that change in venue. Therefore, the motion to change venue for the first cause of action is **granted**. The Clerk is directed to send a copy of the file and this Order to the Northern District of New York.

The caption for this action is hereby amended to read: A. David Ciappo v. Liberty Mutual Insurance Company and Liberty Life Assurance Company of Boston (collectively "Liberty Mutual"), 04 Civ. 02602 (JGK).

**SO ORDERED.**

**Dated: New York, New York  
June 10, 2005**



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**John G. Koeltl**  
**United States District Judge**